

**BEFORE THE
THREE-MEMBER DUE PROCESS HEARING PANEL
EMPOWERED PURSUANT TO SECTION 162.961, RSMO**

PARENTS OF A MINOR CHILD,,)	
)	
Petitioners,)	
)	
vs.)	2004 - DESE - EFW/10
)	
CENTRAL R-III SCHOOL DISTRICT,)	
)	
Respondent.)	

COVER SHEET INFORMATION

1. The minor child,, is the son of _____ (“Parents”). was born on _____ . ’s Social Security number is _____.
2. At all times material hereto,, resided with Parents in Park Hills, Missouri 63601, which residential address is located within the boundaries of the Central R-III Public School District.
3. Parents initially filed their request for a Due Process Hearing by letter to the Department of Elementary and Secondary Education (“DESE”) on October 26, 2004.
4. The Three-Person Hearing Panel empowered to hear this cause consists of: Betty Chong, Ed.D., (designated by School District), Fred Davis (designated by Parents), and Edward F. Walsh, Panel Chairperson.
5. The Due Process Hearing was convened on January 7, 2005.
6. At the hearing, Parents and. were represented *pro se* by ’s mother.

7. At the hearing, Central R-III Public School District was represented by Teri B. Goldman, Esq., Teri B. Goldman, L.L.C., 36 Four Seasons Center, #136, Chesterfield, Missouri 63017.

8. At the hearing, the following issues were presented for the panel's determination:
- a) Did Central R-III comply with the IDEA in providing Parents with a mutually agreed to meeting date for holding the annual review of.'s Individualized Education Program ("IEP")?
 - b) Was Central R-III required under the IDEA to provide Parents with three possible dates for holding the IEP meeting after the Parents were sent a second Notification of Conference?
 - c) Did Central's failure to invite Vocational Rehabilitation for the Blind ("VRB") to the IEP meeting violate the IDEA?
 - d) Was it appropriate for Central R-III to invite Vocational Rehabilitation ("VR") to the IEP?
 - e) If there was non-compliance with the IDEA, did the non-compliance deny of a free appropriate education, and, if so, what are the appropriate remedies?
9. The parties submitted post-hearing briefs and/or arguments.
10. The Decision in favor of Central R-III was rendered on March 30, 2005.

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DECISION AND ORDER

This is the final decision of the hearing panel in an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415(f) (1997), and Missouri law, §162.961.3, RSMo. The hearing panel, upon due consideration of evidence and argument presented in this matter, determines that the record fails to demonstrate that the respondent Central R-III School District violated the IDEA as claimed by the Petitioners. In support of this decision, the hearing panel makes the following findings of fact and conclusions of law whereupon to issue its decision and order.

PROCEDURAL HISTORY

1. On October 26, 2004, the Missouri Department of Elementary and Secondary Education (“DESE”) received Petitioners request for a due process hearing.
2. The Due Process Request, dated October 19, 2004, asserts that Respondent Central R-III School District (“Central R-III”) violated IDEA by:

- a) Failing to provide Petitioners with a mutually agreed to meeting date for holding the annual review of the minor child's Individualized Education Program ("IEP"),
- b) Failing to provide Petitioners with three possible dates for holding the IEP meeting,
- c) Failing to invite Vocational Rehabilitation for the Blind ("VRB") to the IEP meeting, and
- d) Improperly including Vocational Rehabilitation ("VR") at the IEP.

3. On November 2, 2004, a three-member due process hearing panel was empowered to hear the request and to render its decision on or before December 10, 2004.

4. At the joint request of the parties, the decision date was extended to March 28, 2005, as reflected in the order of the Chairperson dated December 13, 2004.

5. The Due Process Hearing was held on January 7, 2005. The hearing was closed at the Petitioner's request.

6. The Hearing Panel consisted of Edward Walsh, Esq., Chairperson; Betty Chong, Ed.D., and Fred Davis. **Tr. 37, 7.**

7. Petitioners were not represented by counsel. The mother of the minor child presented the Petitioners' case. **Tr. 8.**

8. Central R-III was represented by attorney Teri B. Goldman. Also present as a representative for the school district was Barbara Bouchard, Director of Special Services. **Tr. 7-8, 159.**

9. Both parties were afforded the opportunity to present written evidence and had the opportunity to call and cross-examine witnesses. A court reporter was present and made a full record of the proceedings.

10. Petitioners' exhibits¹ P-2, 6-9, 20-25, 33-40, 49, 50-55, 66-67 were admitted without objection². **Tr. 293.** Petitioner's exhibits P-1 and P-26 were offered with objections from Central R-III. Those objections were taken with the case and are overruled. **Tr. 292-93.**

11. Respondent's exhibits R-1 through R-18 were admitted without objection. **Tr. 398.**

12. Both parties submitted post-hearing briefs and/or arguments.

13. On March ____, 2005, Central R-III requested and received a five (5) day extension to the decision date; thereby extending the decision date to April 2, 2005.

FINDINGS OF FACTS

14. The minor child,, is a high school aged male student who resides in and attends the Central R-III School District. is in his senior year of school. His parents are and (collectively "Parents"). **Ex. R. 4, p. 25.**

15. has a disability for purposes of the IDEA and the Missouri State Plan for Special Education Regulations Implementing Part B of the IDEA. **Ex. R. 4, p. 27-44.**

16. is educationally diagnosed as visually impaired due to a medical diagnosis of retinitis pigmentosa ("RP"). RP affects's peripheral vision. According to a 2003 learning profile, he has a visual field measurement of 20 degrees or less in both eyes. He can see, but his vision is restricted. **Tr. 299-300; Ex. R.4, p. 27.**

¹ Petitioner also submitted additional exhibits with her post-hearing filings. Those exhibits are offered after the close of evidence and are not considered by the panel.

² An objection to relevancy was raised initially to several of these exhibits, but was not pursued with the understanding that the panel would ultimately decide what weight to give each exhibit. **Tr. 293, 398.**

17. has attended Central R-III school district since pre-kindergarten. **Tr. 300.**

18. is scheduled to graduate in May 2005. He will turn 18 at or near his date of graduation. **Tr.300-302.**

19. most recent IEP, prior to events leading to the present dispute, was implemented on November 3, 2003. **Ex. R-4.**

Federal/State Rules Regarding IEP Meetings

20. Under federal and state law and/or regulation, Central R-III (or any Missouri Public School District) has an affirmative duty to hold an annual review meeting of the IEP.

21. Failure to hold the IEP meeting in said timely manner may result in Central R-III facing sanctions from the Missouri Department of Elementary and Secondary Education (DESE).

22. Holding the IEP meeting in a timely manner also means that Central R-III must provide proper notice to a student's parent that an IEP meeting has been scheduled.

23. At the hearing, Barbara Bouchard, Director of Special Services for Central R-III, testified about the procedures that the school district was required to follow under Missouri law in scheduling an IEP meeting. **Tr. 162-66.**

24. Central R-III must first attempt to schedule a meeting through a Notification of Conference, which has to be sent out at least ten calendar days prior to the meeting date unless otherwise agreed to by the parent. **Tr. 162.**

25. If a parent responds that he or she cannot attend, Central R-III is required to send a second Notification of Conference. The second Notification also must be sent ten days in advance of the scheduled meeting date. **Tr. 163-64.**

26. DESE's guidance with respect to the Notification does not recommend that a school district provide multiple dates.

27. If a parent cannot be convinced to attend the second meeting date after the second attempt, a school district may hold the IEP meeting as scheduled without the parent in attendance; provided, however, that there is a sufficient record to show that the parent was not convinced. **Tr. 164.**

28. An IEP must be reviewed annually in order to consider its effectiveness and whether continuation and/or modification of the services provided are warranted.

Events Relating to the 2003 IEP

29. On August 12, 2003, Central R-III sent the Parents a Notification of Conference for an IEP meeting to be held on August 25, 2003. The purpose of the meeting was to review and revise the then current IEP. **Ex. P-20; R-3; Tr. 27-28.**

30. The August 2003 Notification was prepared by Claudette Clark, who is the case manager for's IEP at Central R-III.

31. The August 2003 Notification stated that if the time scheduled was not suitable, the Parents could contact Ms. Clark and she would arrange a more convenient time. At the bottom of the notification form, Ms. Clark handwrote the following statement: "Would you like us to invite Darlene Felts? If so, please sign and date this form and return it. If you want to invite her yourself, just let us know that you have done so. We would like her to be there." **Ex. R-3; Ex. P-20; Tr. 28.**

32. Darlene Felts is a children's services coordinator for VRB, which is a state agency within the Missouri Department of Social Services. **Ex. R-18.** Ms. Felts is not employed by Central R-III and, therefore, is not a mandatory member of the IEP team.

33. Non-mandatory members of the IEP team may be invited by the Parents or the Central R-III if the person(s) possess specialized knowledge or information about the student's disability.

34. In order for Central R-III to invite VRB to an IEP meeting, the's Parents needed to provide Central R-III with written authorization because of applicable privacy regulations.

35. The Parents never signed and returned the enclosed form and Central R-III added a notation that the parents refused to the sign the form. **Ex. R-3 at 24; Tr. 320-21.**

36. On August 19, 2003, the Parents notified Central R-III by separate letter that they would not be able to attend August 25th meeting date and, instead, proposed three alternative meeting dates (September 8, 15 and 29). **Ex. P-21; Tr. 29-30.**

37. In response to the Parents' letter, Ms. Clark sent a second Notification of Conference, scheduling the meeting for September 8, 2003, one of the dates listed in the Parents' letter. The second Notification also stated that, if the time was not suitable, the parent should contact Ms. Clark to arrange a more convenient time. **Ex. P-22; Tr. 30.**

38. 's IEP team convened on September 8, 2003 to hold its annual IEP review. The following individuals were among those in attendance: both Parents, David Wicks³, and Pam Walls, the Parents' advocate. **Ex. P-24.**

39. On September 12, 2003, the Parents lodged a complaint against Barbara Bouchard, the Director of Special Services, with the Assistant Superintendent for Central R-III, Dr. Desi Mayberry.

40. The Parent's complaint alleged that Ms. Bouchard violated an agreement with the Parents by not allowing Ms. Felts to participate at the IEP meeting, by scheduling IEP meetings

³ David Wicks is 's Braille mobility instructor. He is an independent contractor and is not an employee of Central R-III.

on state holidays when Ms. Felts could not attend and by failing to invite Ms. Felts. The complaint requested as remedies that Ms. Bouchard be removed as a member of the IEP team and that an additional IEP meeting be held. The Parents provided three possible dates for this additional IEP meeting. **Ex. P-27.**

41. On September 18, 2003, Dr. Mayberry responded to the Parents' complaint. Dr. Mayberry's response noted that the Parents had made similar complaints previously. Because those earlier complaints had been addressed, Dr. Mayberry was not willing to revisit those issues again.

42. Dr. Mayberry's response also informed the Parents that Central R-III could not directly invite Ms. Felts to attend as a VRB representative at the IEP meeting because the Parents refused to provide the school district with necessary written consent as required by law.⁴ **Ex. P-28.**

43. The Parents then sent another letter, on or about September 22, 2003, to Dr. Mayberry. In that letter, the Parents acknowledged their refusal to sign the release and indicated that signing the release would, in the opinion of the Parents, permit Central R-III to obtain information from VRB without having them actually attend the IEP meeting.

44. On September 23, 2003, Dr. Mayberry again informed the Parents that that State Regulations required Central R-III to obtain a parental release before the school district, itself, could lawfully invite an agency, like VRB, to attend 's IEP meeting. Dr. Mayberry again informed the Parents that they could invite those same agency representatives themselves, if so desired, without a release. **Ex. P-30.**

⁴ This limitation on Central R-III, however, did not prevent the Parents from inviting Ms. Felt themselves if they so desired. It only meant that Central R-III or its representatives could not initiate contact or directly coordinate having Ms. Felt at the meeting absent the Parent's written consent which was not granted.

45. On or about September 24, 2003, Central R-III provided the Parents with a Notice of Action refusing their request to have an additional IEP meeting to discuss transition. The basis for the refusal was that transition was discussed at 's September 8, 2003 IEP meeting. **Ex. P-31; Tr. 45-46.**

46. On October 15, 2003, Central R-III sent the Parents a Notification of Conference for an IEP meeting to be held on October 27, 2003. The notification informed the Parents that if the date of the meeting was not suitable, that the Parents could contact Mrs. Bouchard to arrange a more convenient time. At the same time, Central R-III also sent out a Notice of Action proposing to have an IEP meeting in order to review and revise 's IEP. **P-33; P-34; Tr. 46-48, 50-51.**

47. On October 17, 2003, the Parents corresponded with the District in response to these two notices. In that correspondence, the Parents raised questions about the proposed meeting in light of Central R-III's previous refusal to reconvene the IEP team. The Parents also indicated that the scheduled date was not convenient and offered two alternative dates on that the Parents could attend. **P-35; Tr. 51-53.**

48. On or about October 23, 2003, Mrs. Bouchard corresponded with the Parents in response to their October 17th letter. In that letter, Mrs. Bouchard enclosed another Notification of Conference that scheduled an IEP meeting for November 3rd, which was one of the dates proposed by the Parents. **Ex. P-36; Tr. 53-54.**⁵

49. The Notification of Conference for the November 3rd meeting indicated that the meeting would begin at 8:30 AM. The Parents subsequently objected to that start time because it

⁵ At hearing, Mrs. Bouchard testified that the District has considered dates proposed by the Parents when scheduling Jason's IEP meetings. Tr. 52-53.

was their belief that such a start time would prevent certain individuals from attending. The Parents stated that they wish to meet only at 3:30 PM. **Ex. P-38; Tr. 57.**

50. On November 3, 2003, 's IEP team convened.⁶ Present for the meeting was 's mother, the Parents' advocate, Pam Walls, John Dayes, Barbara Bouchard, Claudette Clark, Brad Coleman, Tammy Wadlow and Pam Wallis.⁷ **Ex. P-39; R-4; Tr. 58-60.**

51. The November 2003 IEP called for Central R-III to provide 90 minutes of instruction in Braille. **Ex. R. 4.**

52. The Braille instruction is provided by David Wicks. Mr. Wicks typically provides special education services to after school on Mondays. He has done so since approximately 1998 or 1999. **Tr. 303; Ex. R-4.**

53. Mr. Wicks is a contract provider and provides such services throughout numerous Missouri school districts. Because of his schedule, Mr. Wicks is typically available to attend IEP meetings only after school on Mondays. However, the record does show that Mr. Wicks has been available to attend on other days of the weeks. **Tr. 303.**

54. Both parties view Mr. Wicks as an important member of 's IEP team and his presence as vital to the IEP process⁸.

55. The November 2003 IEP became 's "stay-put" IEP upon the Parents' initiation of the current request for due process.

⁶ The record is inclusive as to which party requested this meeting. The Notice does indicate that the meeting was held at the Parents' request. However, Central R-III denied their previous request. The Panel is aware of no other request being made by the Parents for an IEP during this time period.

⁷ A review of the IEP does not include a signature page of attendees, as one would commonly expect. Therefore, the Panel can only rely on the accuracy of the report itself, which was generated by Central R-III.

⁸ On cross-examination testified that Mr. Wicks presence, in her opinion, was not necessarily mandatory to having the IEP team meet. **Tr. 304.**

Events Relating to the 2004 IEP

56. Because the 2003 IEP was implemented on November 3, 2003, it is calculated that an annual review meeting of the IEP had to be held no later than November 2, 2004.⁹

57. On September 23, 2004, Central R-III sent the parents its first Notification of Conference. The Notification called for an IEP meeting to be held on October 18, 2004, and provided the Parents with 25 days advance notice. **Ex. P-49; R-5; Tr. 83-84, 95, 162-63, 244, 265, 324.**

58. The September 2004 Notification stated that, if the date and time was not suitable, the Parents could contact Ms. Clark to arrange a more convenient time. **Ex. P-49; R-5; Tr. 324-25.**

59. 's mother testified that the Parents did not contact Ms. Clark upon receiving the first Notification. **Tr. 325.**

60. Additionally, the September 2004 Notification included at the bottom of the form a confirmation provision wherein the Parents could indicate their availability to meet on the date scheduled or, alternatively, indicate if the meeting date should be rescheduled. **Tr. 84; Ex. P-49; R-5.**

61. On that section of the Notification, 's mother checked that the conference should be rescheduled for a later time and, in the section where she was to provide alternative dates of availability, 's mother wrote, "when Rehab for Blind can participate at the meeting." The mother did not, however, provide Central R-III with alternative meeting dates. **Ex. P-49; R-5; Tr. 84, 328.**

⁹ Central R-III asserts that the deadline would extend to November 3, 2004. However, for purposes of this Decision a more conservative calculation is warranted.

62. The September 2004 Notice also included a release of information form (similar to the one sent in 2003), which Central R-III requested the Parents sign so that the school district could directly invite representatives from VRB. **Ex. R-5 at 46; Tr. 84-85.**

63. The Parents did not sign and return the release. **Tr. 332.**

64. After receiving the September 23, 2004 notification, 's mother called Ms. Felts and Ms. Walls about the meeting, but did not ask them to provide dates on which they could attend. **Tr. 328-29.**

65. On October 15, 2004, 's mother telephoned Ron Coleman, 's high school principal, and informed him that the Parents would not be able to attend the October 18 meeting. **Ex. R-6; Tr. 169-70.**

66. Ms. Clark was verbally informed on October 15th that the Parents could not attend the meeting scheduled for the following Monday.¹⁰ Ms. Clark was directed to send out another Notification and did that same day. The second Notification of Conference called for the IEP meeting to take place on Monday, November 1st. **Ex. R-9; Tr. 246-48.**

67. Additionally, on or about October 15, 2004, the Parents hand-delivered a letter addressed "To Whom It May Concern" to the high school principal's office. The letter indicated that the parents were unable to attend the IEP meeting scheduled for October 18 because Ms. Walls and Ms. Felts could not attend on that date. **Ex. P-51; R-7; Tr. 87-88, 322-23, 333-34.**

68. The hand-delivered letter states that Central R-III had refused to invite VRB because the Parents refused to sign the release of information provided and that VRB had the Parents' permission to attend the IEP meeting and share information. The Parents asked Central R-III to reschedule the meeting date and to provide the Parents with "a minimum of three

¹⁰ Ms. Clark testified that she was contacted by Ron Coleman about the Parent's inability to attend the October 18th meeting.

alternative dates for the meeting in order for the Parents to coordinate VRB's attendance. **Ex. P-51; R-7; Tr. 89.**

69. Ms. Clark was unaware of the hand-delivered letter, or its contents, at the time she generated the second Notification of Conference. **Tr. 238, 245, 248, 265-67, 283.**

70. The hand-delivered letter was not seen by Mrs. Bouchard until several days later when it was sent to her office through inter-office school mail. **Tr. 96, 207.**

71. The second Notification did not provide three possible dates for the IEP meeting as the Parents had requested.

72. Had Ms. Clark or Mrs. Bouchard been aware of the request, the record shows that it would have not been possible for Central R-III to comply with the Parents' request in light of the limited calendar dates available.¹¹

73. The second Notification indicated that the Parents should contact Ms. Clark if the time listed was not suitable and further requested that the Parents provide alternative dates in the event the meeting needed to be rescheduled. **R-9; Tr. 338-39.**

74. After receiving the second Notification, the Parents did not respond. Instead, the Parents filed a due process request on October 19th and which was received by DESE on October 26th. **Tr. 214-15, 284-85, 338-39.**¹²

75. On or about October 18, 2004, VR contacted Central R-III to inform the school district that they would not be able to attend the October 18, 2004 IEP meeting, even though the meeting had already been rescheduled. In addition, on that same date, a representative from VR

¹¹ Under state regulations ten-calendar days notice was required. Therefore the earliest date possible was Monday, October 25th. Furthermore, the meeting needed to be held on Monday to ensure Mr. Wicks' participation. Consequently, there were an insufficient number of Mondays remaining to offer three options and to meet the state's ten-day notification requirements. **Tr. 90, 112-14, 125, 284, 329.**

¹² At hearing, Ms. Clark testified that 's mother did not contact her about the meeting. However, she had a conversation with David Wicks who stated that the mother indicated she would not attend the November 1st meeting, but was going to file a due process complaint instead. **Tr. 286.**

contacted Central R-III stating that had contacted that agency and informed VR that the Parents want them invited to the IEP meeting. **Ex. R-10; Tr. 268-70; 282.**

76. On or about the morning of November 1, 2004, 's mother telephoned the school nurse to state that was ill and would not attend school that day. The mother also informed the nurse that the Parents would not attend the IEP meeting.¹³ **Tr. 220, 340.**

77. On or about November 1, 2004, 's IEP team reconvened to conduct its annual IEP review. The Parents and their advocates did not attend. This was the first IEP meeting that the Parents had failed to attend. **Ex. P-53; R-13; Tr. 101, 104, 122-23, 151, 180, 342.**

78. Prior to November 1st, the Parents never communicated to Central R-III that the date was not mutually convenient and never informed Central R-III why they were not going to attend. **Tr. 171-74, 180, 314.**

79. The IEP team convened without the Parents present because Central R-III had provided two notifications prior to November 1 and was legally obligated to conduct 's annual IEP review on or before November 2.

80. On November 1st, Central R-III was aware of the Parents' due process request, but still believed Central R-III was required to meet and conduct the annual review prior to the deadline. **Tr. 101, 174.**

81. Had the IEP deadline not been imminent; Central R-III representatives testified it was probable that a third meeting date could have been offered for the Parents. **Tr. 204-06.**

82. The IEP prepared for that date indicates that Central R-III had discussed a referral to VRB with the Parents, but that the Parents refused to give Central R-III sufficient permission

¹³ At hearing, 's mother stated that she would not have attended the meeting even if her son had been well. **Tr. 340.**

to invite VRB representatives to 's IEP meetings or to exchange information outside the IEP meeting with those individuals.

83. At the beginning of the IEP meeting, an attempt was made to have the Parents' participate by telephone. However, the Parents declined to participate. **Tr. 106-07, 314.**

84. On or about November 3, 2004, Central R-III provided the Parents with a notice of action proposing 's graduation from high school as a significant change in placement and noted that graduation would occur if stay-put did not preclude graduation in May 2005. **Ex. P-55; Ex. R-16; Tr. 117-18.**

CONCLUSIONS OF LAW

This matter involves the primary question of whether the decision of Central R-III to schedule an IEP meeting for November 1, 2004, was "at a mutually convenient time" as required by the Individuals with Disabilities Education Act ("IDEA"). Secondary questions include whether Central R-III adhered to its obligations under IDEA by failing to provide Petitioners with three possible dates for holding the IEP meeting, failing to include VRB at the IEP as the Parents requested and improperly including VR at the IEP. If there was non-compliance, did the non-compliance deny of a free appropriate public education, and, if so, what are the appropriate remedies. As discussed below, the panel concludes that there is competent and substantial evidence upon the whole record to support Central R-III's position on these questions.

Jurisdiction

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1487 ("IDEA") and Missouri law, § 162.670, RSMo., *et seq.* Part B of the IDEA, which is germane to these dispute, sets forth regulations for children age 3 to 21 with disabilities.

Pursuant to 20 U.S.C. § 1415¹⁴ and § 162.961, RSMo,¹⁵ this Hearing Panel has jurisdiction to hear this dispute.

IDEA and FAPE Requirements

IDEA offers aid to states that adopt policies and programs to assure “all children with disabilities the right to a free appropriate public education.” 896 S.W.2d 918, 920 (Mo banc 1995); see, *Breen By and Through Breen v. St. Charles R-IV School District*, 2 F. Supp. 2d 1214, 1221 (Mo. E. Dist. 1997) (citations omitted). A free appropriate public education (“FAPE”) is defined by federal statute to mean special education and related services that:

- (A) Have been provided at public expense, under public supervision, without charge,
- (B) Meet the standards of the State educational agency,
- (C) Include an appropriate preschool, elementary, or secondary school education in the State involved, and
- (D) Are provided in conformity with the individualized education program required under section 1414(a)(5) of this title.

20 U.S.C. § 1401(a)(18); quoted in, *Breen*, supra.

The United States Supreme Court has held that IDEA does not prescribe any substantive standard regarding the level of education to be accorded to disabled children and does not require “strict equality of opportunity or services.” *Bd. of Educ. of the Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 189, 195, 198 (1982). “The Act’s requirement of providing a

¹⁴ A parent of a child with a disability has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). “Whenever a complaint has been received under subsection (b)(6) . . . , the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.” 20 U.S.C. § 1415(f)(1).

¹⁵ Subsection 3 states that a “parent, guardian or the responsible educational agency may request a due process hearing by the state board of education with respect to any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of the child.”

FAPE is satisfied when the state provides personalized instruction with sufficient support services to allow the disabled child to benefit educationally from that instruction.” *Breen*, supra, at 1221. Furthermore, an appropriate educational program is one that is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*. at 207.

Missouri’s Implementation of IDEA and FAPE

In Missouri, the Department of Elementary and Secondary Education (DESE) has adopted regulations for implementing Part B of IDEA. Those regulations are referred to collectively as the *Missouri State Plan For Special Education Regulations Implementing Part B of the IDEA* (“*The Missouri State Plan*”). Local Educational Agencies (“LEA”) like Central R-III must abide by the provisions of *The Missouri State Plan* in order to meet their responsibilities under IDEA.

IDEA’s Individual Education Program

The primary vehicle for carrying out the IDEA’s goals is the “individual education program” (“IEP”). 20 U.S.C. § 1414(d), 34 C.F.R. § 300.15. The IEP is a written statement that is developed to meet the “unique needs” of each disabled child. The IEP is prepared at a meeting that includes representatives of the LEA, the child’s current teacher(s), the parents or guardian of the child, and, whenever appropriate, the child. 34 C.F.R. §§ 30.340-347. These individuals are collectively known as the IEP team. The IEP team may also include, at the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child as is appropriate. 34 C.F.R. § 30.344. The IEP team must meet at least annually to review and, where appropriate, revise the IEP. The LEA is responsible for ensuring that the IEP meeting takes place. 34 C.F.R. § 300.343(c)(1).

's Individual Education Program

There is no dispute that qualifies as a child with a disability. is educationally diagnosed as visually impaired due to a medical diagnosis of retinitis pigmentosa ("RP"). RP affects 's peripheral vision. According to a 2003 learning profile, he has a visual field measurement of 20 degrees or less in both eyes. He can see, but his vision is restricted. **Tr. 299-300; Ex. R-4, p. 27.** has had an IEP for the entire time he attended Central R-III.

The dispute here is whether Central R-III complied with the procedural requirements of IDEA and *The Missouri State Plan* when the school district scheduled and subsequently held an IEP meeting on November 1, 2004. The record is clear that an IEP for was implemented on November 3, 2003. **Ex. R-4.** Under 34 C.F.R. § 300.343(c)(1), Central R-III had an affirmative duty to hold a follow up IEP meeting for the purpose of reviewing and, if necessary, modifying the November 3, 2003 IEP by no later than November 2, 2004.

The record shows that on September 23, 2004, Central R-III sent the parents its first Notification of Conference for the purpose of scheduling an annual IEP meeting as required by law. The Notification scheduled the IEP meeting for October 18, 2004, and provided the Parents with 25 days' advance notice. **Ex. P-49; R-5.** The Notification stated that, if the date and time provided was not suitable, the Parents could contact 's case manager, Claudette Clark, to arrange a more convenient time. **Ex. P-49; R-5; Tr. 324-25.** It is undisputed that 's Parents at no time contacted Ms. Clark to inform her if the October 18th meeting date was not suitable. **Tr. 325.**

The Notification included at the bottom of the form a confirmation provision wherein the Parents could indicate their availability to meet or, alternatively, indicate if the meeting date needed to be rescheduled. **Tr. 84; Ex. P-49; R-5.** On that section of the Notification, 's mother checked that the conference should be rescheduled for a later time and, in the section where she

was to provide alternative meeting dates wrote, “when Rehab for Blind can participate at the meeting.” ’s mother did not, however, provide Central R-III with alternative meeting dates. **Ex. P-49; R-5; Tr. 84, 328.**

Based on the record presented, it appears that the Parents’ relationship with certain employees of Central R-III was strained. How or why the relationship became strained is not relevant to resolving this matter. However, because the relationship was strained, the Parents typically communicated in writing with the school district about matters relating to ’s IEP. The Parents apparently never agreed to the meeting date provided in the first Notification of Conference. Instead, the Parents’ past practice typically would be to provide Central R-III with two (2) or more alternative dates, which would be communicated in writing. This practice stems in part from the fact that the Parents refuse to grant Central R-III permission and written authorization to invite other parties with specialized knowledge of ’s condition – such as representatives from VRB.

In this instance, the Parents deviated from this practice. On October 15, 2004, ’s mother telephoned the student’s principal, Ron Coleman, and informed him that the Parents would not be able to attend the October 18 meeting. **Ex. R-6; Tr. 169-70.** Mr. Coleman subsequently informed Ms. Clark that the Parents could not attend the October 18th meeting. Ms. Clark sent out another notification the same day. The second Notification of Conference called for the IEP meeting to take place on November 1st. **Ex. R-9; Tr. 246-48.**

The record also shows that on October 15, 2004, the Parents hand-delivered a letter addressed “To Whom It May Concern” to Mr. Coleman’s office. This letter indicated that the parents were unable to attend the IEP meeting scheduled for October 18 because VRB’s representative could not attend on that date. **Ex. P-51; R-7; Tr. 87-88, 322-23, 333-34.** The

hand-delivered letter states that Central R-III had refused to invite VRB because the Parents refused to sign the release of information provided and that VRB had the Parents' permission to attend the IEP meeting and share information. The Parents asked Central R-III to reschedule the meeting date and to provide the Parents with a minimum of three alternative dates for the meeting in order for the Parents to coordinate VRB's attendance. **Ex. P-51; R-7; Tr. 89.**

It is unclear when Mr. Coleman saw this letter. Both Ms. Clark and Ms. Bouchard testified that they did not see the letter or have knowledge of the letter on October 15th. Also, it is uncertain what steps Central R-III could have taken to accommodate the Parents' request for multiple dates given the impending deadline and the fact that both parties wanted David Wicks to be present and his schedule allowed him limited availability. It also appears that DESE Guidance prevented Central R-III from sending a Notification of Conference with multiple meetings dates.

In any event, the Parents never expressly told Central R-III that they could not attend the November 1st date. The Parents did file a due process request on October 19, 2005. The November 1st meeting did take place and efforts were made by Central R-III to have the Parents participate via telephone. The Parents declined that offer.

To achieve its goals, the IDEA "establishes a comprehensive system of procedural safeguards designed to ensure parent participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree." *Honig v. Doe*, 484 U.S. 305, 308 (1988). Because consensus between parents and educators may not always be possible, Congress provided for administrative review of an IEP determination at the request of either the parents or the local educational agency and, after exhaustion of the administrative review process, judicial review in a state or federal court.

If the parents disagree with the IEP, or proposed changes to the IEP, the status must provide them with an impartial due process hearing. 20 U.S.C. § 1415(b); 34 C.F.R. § 300.507.

In *Rowley*, the Supreme Court noted that determining if a school district complied with the IDEA involves a two-part inquiry. First, has the school district complied with the IDEA's procedures? Second, is the IEP developed through those procedures reasonably calculated to enable the child to receive meaningful educational benefits? 458 U.S. 176, 206-07 (1982).

It is well established Congress emphasized the importance of the IDEA's procedural safeguards so that parents are able to participate in the development of a student's IEP. *Independent School Dist. No. 283 By JD*, 88 F.3d 556, 562 (8th Cir (MN) 1996). Also significant, however, is that minor technical procedural violations should not lead to a finding of a denial of FAPE. *Id.* At 567; *Evans v. Dist. No. 1 of Douglas County, Neb.*, 841 F.2d 824, 825 (8th Cir. 1988). As one court has noted, “[t]o hold that technical deviations from the IDEA’s procedural requirements render an IEP entirely invalid would “exalt form over substance.” *Doe v. Defendant 1*, 898 F.2d 1186, 1190 (6th Cir. 1990), *reg’s denied* (1990).

Perhaps the hallmark of these procedural rights is the parents’ right to participate in the IEP process. 34 CRF § 300.344 of the federal regulations expressly identifies parental participation at the IEP meetings as mandatory. The IDEA places the initial obligation on school districts to initiate the IEP process. *See* 34 C.F.R. § 300.343. More specifically, section 300.345 provides that “[e]ach public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including – (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.” 34 C.F.R. § 300.345(a)(1). That same regulation also requires the

district to schedule “the meeting at a mutually agreed on time and place.” 34 C.F.R. § 300.345(a)(2).¹⁶

In the comments to this particular federal regulation, the Department of Education indicated that “[t]he key factor in § 300.345(a) is that public agencies effectively communicate with parents about the up-coming IEP meeting, and *attempt to arrange a mutually agreed upon time and place for the meeting*. This process should accommodate the parents’ work schedules to ensure that one or both parents are afforded the opportunity to participate.” Fed. Reg. Vol. 64, No. 48 at 12587 (emphasis added).

Under *Missouri State Plan*, **Regulation IV – FAPE/IEP/LRE**, any school district may conduct an IEP meeting without a student’s parent in attendance if the school district “is unable to convince the parents that they should attend.” In such circumstances the school district must have a record of “at least two (2) attempts to arrange a mutually agreed on time and place.” Sufficient documentation would include items such as:

- A) Detailed records of telephone calls made or attempted and the results of those calls;
- B) Copies of correspondence sent to the parents and any responses received; or,
- C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

In this instance, the Panel believes the record contains substantial evidence of Central R-III’s efforts to attempt to arrange a mutually agreed on time and place for the IEP meeting. Central R-III began its notification process in September 2004, approximately 40 days in advance of the review deadline. The Parents do not dispute that they received the first

¹⁶ Notably, that same regulation provides that “[a] meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend.” See *Burlobich v. Bd. Of Educ. of Lincoln*, 208 F.3d 560 (6th Cir. 2000).

Notification or that they did not know that an IEP meeting needed to be held by November 2, 2004. Central R-III cannot be held liable for the Parents' decision to wait as long as they did to respond. Nor can Central R-III be held liable for the manner in which the Parents chose to respond. The Panel concludes that Central R-III effectively communicated with the Parents and provided them with two different Notifications of Conferences. Because the Parents declined to attend either of those meetings, Central R-III was within its discretion to hold the IEP on November 1st without the Parents in order to comply with the annual review deadline that was approximately 24 hours away.

With respect to the secondary questions posed by the Parents, the panel concludes that a Notification of Conference cannot contain more than one meeting date. Therefore, Central R-III did not violate IDEA by failing to provide multiple meeting dates as the Parents requested. The panel also concludes that VRB should be included at these IEP meetings. However, VRB is not a mandatory member of the IEP team. Therefore, Central R-III did not violate IDEA by failing to invite VRB because the parents continually refused to sign the appropriate written releases. While IDEA gives the school district the discretion to include other parties with specialized knowledge, no one has asserted that IDEA trumps the protections under the Family Education Rights and Privacy Act ("FERPA"). Therefore, Central R-III must have written permission from the Parents, which they refused to give. Because Central R-III did not violate IDEA in failing to invite VRB, the panel need not determine if it was proper to have VR attend in lieu of VRB as the Parents assert. Finally, the panel finds no substantial evidence upon the whole record to conclude that these alleged violations in anyway compromised 's right to an appropriate education, seriously hampered the Parents' opportunity to participate in the IEP process, or

caused a deprivation of educational benefits. Thus, the panel cannot find in the Parents' favor. See, *Independent School Dist. No. 283*, 88 F.3d at 562.

DECISION

Wherefore, for the foregoing reasons, the panel finds that Central R-III complied in all relevant respects with the applicable IDEA requirements. Parents' claim that the IEP meeting of November 1, 2004, was not conducted at a mutually convenient time is not supported by a preponderance of the evidence and is denied. Parents' claim that Central R-III is required to provide the Parents with three possible dates for holding the IEP meeting is without merit and is denied. Parents' claim that Central R-III had a duty to invite Vocational Rehabilitation for the Blind to the IEP meeting, absent obtaining a parental release, is not supported by the record and contrary to law. Therefore, the claim is denied. Because Central R-III had no duty at law to invite Vocational Rehabilitation for the Blind, absent parental consent in this instance, the panel need not address the issue of whether it was improper to include Vocational Rehabilitation in lieu of VRB.

SO ORDER on March _____, 2005,

_____/s/_____
Edward F. Walsh, Hearing Officer

All panel members concur

_____/s/_____
Mr. Fred Davis, Hearing Panel Member

_____/s/_____
Dr. Betty Chong, Hearing Panel Member

NOTICE OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Decision constitutes the final decision of the Department of Elementary and Secondary Education in this matter.

PLEASE TAKE NOTICE that you have a right to request a review of this Decision pursuant to the IDEA and/or the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110, RSMo, provides in pertinent part as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within *thirty days* after the mailing or delivery of the notice of the agency's final decision.
2. Such petition may be filed without first seeking a rehearing, but in cases where agencies have authority to entertain motions for rehearing and such a motion is duly filed, the thirty-day period aforesaid shall run from the date of the delivery or mailing of notice of the agency's decision on such motion. No summons shall issue in such case, but copies of the petition shall be delivered to the agency and to each party of record in the proceedings before the agency or to his attorney of record, or shall be mailed to the agency and to such party or his said attorney by registered mail, and proof of such delivery or mailing shall be filed in the case.
3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence.

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. § 300.512.

CERTIFICATE OF SERVICE

The undersigned certifies that on the _____ day of March, 2005, a copy of the foregoing document was served upon the following parties to this action by depositing same in U.S. Mail, First Class, in Kansas City, Missouri, postage prepaid, and duly addressed to:

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